MINUTES
of the
THIRD MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE

August 6-7, 2014
University of New Mexico School of Law
1117 Stanford Dr. NE
Albuquerque

The third meeting of the Courts, Corrections and Justice Committee (CCJ), a joint meeting with the Legislative Health and Human Services Committee (LHHS), was called to order by Representative James Roger Madalena, chair, LHHS, on August 6, 2014 at 9:20 a.m. in the Forum of the University of New Mexico School of Law in Albuquerque.

Present
Rep. Gail Chasey, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Zachary J. Cook (8/6)
Rep. Yvette Herrell (8/6)
Rep. Emily Kane
Sen. Linda M. Lopez
Rep. Georgene Louis
Sen. Cisco McSorley
Sen. Sander Rue
Rep. Mimi Stewart (8/6)
Sen. Lisa A. Torraco

Absent
Sen. Joseph Cervantes
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm

Advisory Members
Sen. Craig W. Brandt
Sen. Jacob R. Candelaria (8/7)
Rep. Kelly K. Fajardo
Rep. Miguel P. Garcia
Rep. Antonio "Moe" Maestas
Sen. Bill B. O'Neill
Rep. Patricia Roybal Caballero
Rep. Phillip M. Archuleta
Rep. Cathrynn N. Brown
Rep. Brian F. Egolf, Jr.
Sen. Daniel A. Ivey-Soto
Rep. Paul A. Pacheco
Sen. William H. Payne
Sen. John Pinto
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton

(Attendance dates are noted for members not present during the entire meeting.)

Staff
Douglas Carver, Staff Attorney, Legislative Council Service (LCS)

Caela Baker, Staff Attorney, LCS
Monica Ewing, Staff Attorney, LCS
Rebecca Griego, Records Officer, LCS
Julio Garcia, Legislative Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, August 6

Call to Order and Introductions

Representative Madalena introduced Representative Chasey and Senator Martinez, co-chairs of the CCJ. Representative Madalena welcomed members and guests and asked legislators on both committees and LCS staff to introduce themselves.

Assisted Outpatient Treatment Panel

Brian Stettin, policy director for the Treatment Advocacy Center in Arlington, Virginia, was an assistant attorney general for New York in 1999 and drafted Kendra's Law, which provides for court-ordered assisted outpatient treatment (AOT) for certain individuals with a history of mental illness to receive a specific regime of outpatient treatment. Mr. Stettin noted that New Mexico is one of only five states that does not have AOT.

Non-adherence to treatment is the single reason for repeated incarceration and hospitalization of a very small subset of individuals who consume a large amount of scarce resources, Mr. Stettin said. New Mexico has three times as many mentally ill persons in jail as any other state. He described a condition common to this group of individuals called agnoscenosia, which is a lack of insight into one's illness. It is not denial, he asserted, but rather a brain-based inability to recognize one's own illness, resulting in lack of adherence to medication and treatment. AOT is a proven, evidence-based approach that provides family members and the community a means to obtain a court order for a plan of treatment for these individuals.

Despite studies showing its success, AOT remains controversial, Mr. Stettin admitted, with advocates of self-direction asserting that it is amounts to forced treatment. However, punishment plays no part in AOT, he said, nor does AOT allow for the restraint or forced medication of a patient. According to Mr. Stettin, court-ordered AOT works in the following ways: 1) it motivates the person who is mentally ill by indicating the seriousness of need (the "Black Robe" effect); 2) it provides for court oversight of providers of services; and 3) it allows for continuous monitoring of both patient and provider. AOT has been shown to improve

outcomes for this small, highly vulnerable population, and it is long overdue in New Mexico, according to Mr. Stettin.

Nancy Koenigsberg, legal director of Disability Rights New Mexico (DRNM), said she agrees with many of Mr. Stettin's points and that AOT is working in New York, where the state provided funding of $32 million to get the program off the ground (see handout). She noted that there are still small and rural parts of New York that do not use AOT due to lack of infrastructure and support. New Mexico no longer has a community-based behavioral health treatment system, Ms. Koenigsberg said, and thus has no infrastructure to implement AOT. Her organization is also very concerned with the lack of case management in New Mexico. The four managed care organizations (MCOs) that operate under Centennial Care are mandated by the federal Patient Protection and Affordable Care Act (ACA) to provide behavioral health services, but even with the highest level of need, she pointed out, care coordination consists of just one phone call a month.

Ms. Koenigsberg reviewed a copy of AOT legislation being proposed to the committees today for endorsement (see handout under #4) and said she had many concerns, including the amendments to the Mental Health and Developmental Disabilities Code that may undermine confidentiality and privacy, questions about how treatment guardians would be affected, inconsistent definitions and the ripple effect of these changes. The bill's $3 million appropriation to the DOH for surveillance of the program is confusing, Ms. Koenigsberg said, especially since no funding is designated for services. With no connection to services, the bill is "an empty promise".

On questioning, Mr. Stettin, Ms. Koenigsberg and committee members addressed the following topics.

Legal representation for those brought before the court. Mr. Stettin said that every AOT program provides for this representation, even though the action is civil. In New York, it is part of the administrative cost of the program through the budget of the court.

Disappearance of behavioral health services in New Mexico. Ms. Koenigsberg noted that managed care has eroded the behavioral health system in that it has undergone multiple transitions resulting in very few intermediate services and supports left in the system. In July, it was reported in the newspaper that La Frontera, the new agency from Arizona, had laid off 87 staff in southern New Mexico. She pointed out that there is no intensive case management in Medicaid's behavioral health benefits package — a service that is a cornerstone of any AOT program, she said.

A committee member expressed frustration with the millions of dollars designated for behavioral health care delivery by New Mexico's Medicaid MCOs. These funds have gone into the pockets of the MCOs through the capitated rates, and the MCOs face no consequences for the lack of services, the member asserted. In the 1990s, there were several psychiatric facilities in

Albuquerque. Now, many mentally ill individuals are in hospitals and in jail, with the expense borne by local governments.

Fate of legislation establishing community engagement teams (CETs). Governor Susana Martinez vetoed House Bill 588 in the 2013 regular session because she felt it was unconstitutional, Ms. Koenigsberg said, but she promised four pilot programs that have not yet materialized. A committee co-chair noted that a representative from the Office of the Governor was in the audience and asked that person to take these concerns back to the governor. Another committee member moved that a letter be drafted from both the LHHS and the CCJ to the governor asking what CET legislation she would support. The motion was seconded and passed unanimously.

Court-Supervised Outpatient Treatment

Oscar Kazen is a probate court judge in Bexar County, Texas, serving an area (including San Antonio) with a population of 1.8 million people. Texas is forty-ninth in the nation in mental health spending, according to Judge Kazen. He is a former criminal court judge and is also a trained drug court judge. He alone presides over the county's AOT program.

Judge Kazen, along with a behavioral health services provider, monitors between 60 to 80 individuals at any given time in his AOT program, meeting weekly to take stock of how things are going. The person is encouraged to participate and take medications and is told what to expect. These meetings also ensure that providers are actually providing the needed services, Judge Kazen said. The results indicate that hospitalizations among this group have been reduced by 50 percent to 75 percent. He reported that 100 randomly chosen participants were responsible for 67,000 lifetime hospital bed days before coming into his program. In just the year prior to participation in his AOT program, this cohort was responsible for 8,800 hospital bed days. In the year during the cohort's participation in the AOT program, hospitalizations decreased by 62 percent. After this cohort was no longer in the AOT program, "wellness became their pattern", according to Judge Kazen, with only 38 admissions for a total of 3,400 hospital bed days.

Judge Kazen emphasized that AOT is not punishment; instead, it is a jail and hospital diversion program. The treatment plan can involve the judge, patient, physician and family members, all in the same room, talking to each other. If there is a problem with a plan, it is caught early. Most of the persons in his AOT program are on Medicaid, and the MCOs are eager to work with the program, whose participants are already at level 3 for care management. Judge Kazen concluded by strongly urging committee members to consider AOT for New Mexico, noting that funding for AOT and funding for services are not mutually exclusive. He reported that his AOT program has saved $3 million in hospital bed days.

On questioning, Judge Kazen and committee members addressed the following topics.

Financial burden on the court. The judge is already there, but there does have to be an attorney representing the respondent, Judge Kazen responded. The "potentially harmful to self or

others" threshold has to be laid out in the affidavit, and while this broadens the group of people that can be covered by AOT, there is always the safety in appellate courts. Every 90 days, the order is reevaluated.

Could AOT be made available to Native Americans? Not in Texas and not on tribal lands, Judge Kazen said. But if there is already jurisdiction to have Native Americans in court, then one could proceed or try working with the tribes themselves, he advised. Perhaps this bill could be a springboard to start those discussions.

More data on results. A member asked Judge Kazen to send more data to the committees about the AOT treatment results and budget numbers for the program in Bexar County; he agreed to do so.

Where does the team physician come from? A local mental health authority has public clinics, and within these there are psychiatrists, Judge Kazen said. But when the program began, it was just one judge and one liaison officer following up with the patient, asking, "Did you go to your appointment today?", and "If not, you will have to see the judge". It can work by empowering a local judge, he said. Another member countered that Judge Kazen does not understand how New Mexico is utterly devoid of services. Judge Kazen responded that he still recommends passing empowering legislation. "There is a fire out there", he said. "Do not wait until everything is perfect before trying it."

Measuring the success of AOT. Success is having people graduate from the program, Judge Kazen explained, and success is when a person looks him in the eye and says, "Thank you". He had someone in the program who once could not even talk who now is attending college, and another who had two guns and was living in the back of his car and who is now a licensed counselor. "A day out of the hospital is a success", he concluded.

Behavioral Health Panel

Nils A. Rosenbaum, M.D., an Albuquerque psychiatrist who often works with police and social workers, is supportive of the proposed AOT-enabling legislation. He gave committee members several examples of patients who refused treatment and could have benefited from such a program. If this bill passes, Dr. Rosenbaum said, the program should grow organically based on what resources the community has and can deliver. He recommended including peers and increasing engagement as much as possible. In every community, he said, there are people who want to help.

Mauricio Tohen, M.D., chair and professor in the Department of Psychiatry at the UNM HSC, had a background in public health in Massachusetts and Texas before coming to New Mexico. The ACA has provided a window of opportunity, Dr. Tohen believes, because all insurance now must cover mental health services. While assessments indicate a need for more hospital beds, Dr. Tohen said what is needed is more services other than inpatient care. Mental health conditions are lifelong, and hospitalization represents an acute phase. In the past, New

Mexico had more intermediate services, but these have disappeared. Dr. Tohen used to practice in Texas, has been in Judge Kazen's courtroom on several occasions and is supportive of AOT. It does not work all by itself, he noted. What is optimal is more AOT and specialized residential treatment.

Dr. Tohen explained that the main purpose of AOT for noncompliant patients is not about protecting the public, but rather about protecting the mentally ill from violence and from the inability to take care of themselves. They need to be protected with treatment, he continued, not just medication. Case management is one of the most effective interventions. In addition to AOT, the state needs to look at providing other intermediate level services and a triage center for first responders to take people to in crisis.

A committee member asked Dr. Tohen if he saw any improvement in New Mexico's behavioral health services. He responded by noting that New Mexico leads the nation in telemedicine. Another member noted that the MCOs use behavioral health dollars in a much stingier way than private insurers. Administrative burdens upon patients and providers have been increased by the MCOs to save money, the member continued, and financial decisions have been made to restrict services. The member noted that case management services should be reimbursable. Dr. Tohen agreed and added that profit can be made in ways that benefit the patient when profit is tied to outcomes.

Review of AOT Legislation

Senator Papen presented a discussion draft of a senate bill, 202.197295.1, enacting the AOT Act. The bill provides for AOT proceedings, requires public health surveillance and oversight, provides for sequestration and confidentiality of records, provides for penalties, amends the Mental Health and Developmental Disabilities Code to require data collection for certain proceedings and makes an appropriation (see handout).

Ms. Mathis, who drafted the bill for Senator Papen, told committee members that the AOT Act is based on New York's law. It is a civil proceeding that will affect fewer than 300 persons in the state who now, without AOT, must become very ill or violent before they are placed into treatment. The AOT Act does not allow for forcible treatment, includes treatment guardians and has many layers of due process, Ms. Mathis said, offering highlights of certain sections of the bill, copies of which had been distributed to committee members.

The AOT Act does not hinge on a determination of incompetency, Ms. Mathis emphasized, and is not meant to circumscribe any statewide standard treatment — this is left to the community providers and the judge. The bill is written very broadly to allow flexibility in fashioning an individualized treatment plan, but it requires services for any particular individual to be specified in the order for AOT.

After a short period of question-and-answer, committee members discussed whether parts of the bill should be reworked or whether to endorse the legislation as presented. Observing that

the bill will be vetted continually as it moves forward, a member moved to endorse it. The motion was seconded and passed 4 to 1.

Supportive Housing Panel

Dennis Plummer, CEO of Heading Home in Albuquerque, described the success of this evidence-based model of permanent supportive housing for individuals and their families who are medically vulnerable and have been homeless for an average of 7.5 years (see handout). It is composed of a collaboration among many local and state organizations and has achieved a retention rate of 81 percent.

The program has reduced jail costs by 39 percent and emergency room visits by 36 percent among this group, and the program has been nationally recognized, Mr. Plummer said. Research of this model by a UNM study has shown that it is less expensive to provide housing with supportive services than it is for those same people to live on the streets. Heading Home would like to expand to other parts of the state, and Mr. Plummer urged legislators to consider housing appropriations and systemic change for which a model already exists.

Paula Harper, executive director of the Supportive Housing Coalition of New Mexico, described her organization's efforts to create and preserve permanent and affordable supportive housing through housing development and rental assistance programs since 1996. The group pioneered the use of a "Housing First" model of permanent supportive housing that has housed over 700 individuals and families (see handout). This is not only the most compassionate thing to do, it is also the most cost-effective, Ms. Harper said. The program has enlisted 112 landlords who have a standard lease. It costs $40,000 to $150,000 annually in emergency room services, incarceration, shelters and hospitalizations for someone to live on the streets, while a housing voucher is just $6,600 per year. A shelter bed is $8,000 per year. Estimates are that Heading Home has saved the City of Albuquerque $3.2 million over the past three years, Ms. Harper said. The coalition plays many roles in the development of affordable housing by serving as developer, general partner, owner and manager through new construction and acquisition and rehabilitation. One new project will provide 60 units of housing in Albuquerque for Native Americans who have behavioral health issues. Housing is not a one-size-fits-all proposition, Ms. Harper said; there have to be different options.

KC Quirk is executive director of Crossroads for Women, which provides housing and intensive support services for homeless women with co-occuring mental and addictive disorders who are working toward self-sufficiency. The agency operates two programs: Crossroads, a permanent supportive housing program utilizing scattered-site housing throughout Albuquerque for women who are cycling between homelessness and incarceration, and their children, and Maya's Place, a highly structured 15-bed transitional housing program for homeless women who are exiting jail or prison, substance abuse treatment or a shelter or living on the streets. Ms. Quirk brought several women with her to illustrate the success of the programs. Tina, a former crack addict who was incarcerated more than 20 times, found help and support at Maya's Place and is now a student at Central New Mexico Community College (CNM). Gina spent 20 years

incarcerated and one year at Crossroads and has now been clean for 16 months. Not once in those 20 years did anyone offer her any education, but now she is in business school. Rhonda was an addict and was homeless for many years with behavioral health problems and then became a client at Crossroads. Now she is a student at CNM and will soon be graduating with a communications degree. Tracy, another Crossroads client, was an addict, had been arrested 40 times, has graduated from CNM and UNM and is now working on her master's degree; she also has become a staff member at Crossroads. There is much conversation about the lack of mental health services, Ms. Quirk said, but it is not enough to just pay for more services. It is also important to identify programs that work.

Elizabeth Simpson's task with Bernalillo County is to develop long-term initiatives for alternatives to incarceration. There is a strong correlation among mental illness, homelessness and incarceration. People end up in jail because they have nowhere else to go, and first responders have very few options (see handout). These problems have been studied by several task forces and the recommendations are the same: 1) crisis triage center as an alternative to jail to assess, stabilize and connect to services; 2) supportive housing; and 3) specialized services for those exiting jail and prison. Current Medicaid care coordination consists of just one phone call a month and one face-to-face meeting, Ms. Simpson pointed out. The intensity of services needs to be increased. There is potential to use Medicaid funding for these services, she said; right now rehabilitation services in New Mexico are limited to speech therapy. In Maine, Medicaid funding has been used to finance a statewide system of permanent housing. She described nine months of weekly planning with city and county officials and service providers culminating in a model for delivery of behavioral health and wraparound services. Funding of $1.1 million has been allocated by the county, and a similar allocation is pending at the city. Her job is to look for significant cost savings to the system, but individual outcomes are what is really important.

There are so many categories of homelessness, one member commented after hearing the panel presentation. The public really needs to be educated about the costs of not providing services. Another member suggested the potential of additional collaborations for these various groups and urged a closer look at the benefits of sharing administrative costs and securing regional funding. This is a national trend, the member pointed out, and sources of funding look more favorably on those who are sharing under one roof.

Substance Abuse Treatment and Rehabilitation Panel

Miriam Komaromy, M.D., associate director of the Project ECHO Institute at the UNM HSC, spoke to the committees about substance use disorders and their high cost: $500 billion a year in the United States (see handout). There are effective medications to help prevent relapse for opioid and alcohol use disorders, she said, but they are underutilized. Studies have shown that the impact of medication treatment for opioid addiction far outweighs the impact of counseling, yet drug courts, probation and parole do not consistently support medication-assisted treatment (MAT), perhaps over concern about diversion of these medications. For post-incarceration treatment, counseling and intense case management are crucial to prevent overdose deaths or recidivism, said Dr. Komaromy. She also runs a grant-funded initiative to treat mental

health and addiction through Project ECHO telehealth. Many with mental health and addiction problems walk in the door of a primary care setting, she explained, so Project ECHO helps train and support nurse practitioners teamed with community health workers who get specialty support from UNM. There are eight primary care sites where screening, diagnosis and treatment are being provided for hundreds of patients every month who would not otherwise get treatment. Dr. Komaromy also described another grant-funded pilot project to engage primary care physicians in providing MAT for opioid-addicted patients through the Project ECHO model and a proposed plan to incentivize statewide training with Medicaid funding, utilizing Project ECHO to enable low-cost treatment in home communities.

John J. Romero, presiding judge, Children's Court, Division VII, Juvenile Justice Center, is one of three judges in Bernalillo County who specialize in children's court with youth who are alleged to be delinquent, neglected or abused. Mental health issues in his court are alarming, he said, estimating that 70 percent of participants have at least one mental disorder. For those with substance abuse problems, mental issues and addiction both need to be treated, Judge Romero said. It is folly to treat youth without talking about families, and judges need to look at ways to engage and empower parents. In Bernalillo County, detox has to take place before treatment, which is funded by a grant. Supportive housing is needed for kids who cannot go home, he said, and treatment that is not connected to the living situation is difficult to get to for kids who do not drive. What is needed is a transitional living program with services inside. Heroin is a serious problem in Bernalillo County, he continued, and is cheaper to buy than a six-pack of beer. New Mexico is second in the nation in accidental death from heroin overdose, and New Mexico's kids are twice as likely to experiment with heroin than kids in any other state. Girls who have trauma in their backgrounds are prone to medication and substance abuse and have diagnosable rates of posttraumatic stress disorder higher than those of returning war veterans. Hogares used to have a treatment facility, Judge Romero lamented, but now the county has entered into a deal to buy the property, and Healing Addiction in Our Community will provide services there with private money. Kids are assessed and referred to a resource provider if they qualify for Medicaid; otherwise, most health insurance will not pay for a single day of substance abuse treatment for youth. There is a school-to-prison pipeline: kids who get in trouble at school are arrested, sent to detention and then released with no consequences. It is important to partner with schools, Judge Romero said, since they serve as the early warning system for youth who have behavioral health problems.

Jolene Schneider is executive director of Four Winds Recovery Center in Farmington, which offers residential detox, including protective custody detox, to residents from around the state. Ninety percent of its 39-bed population comes from court referrals, she said, and is 80 percent male and 90 percent Native American. None of Four Winds' services are covered by Medicaid, she said, and reimbursement has been through the County Indigent Hospital Claims Fund, which was cut last year with a change in the way hospitals are funded. Ms. Schneider said the cut of one-fourth of its operating budget — a loss of $225,000 — in the intensive outpatient program is likely to close the clinic, with a loss of 17 full-time jobs and a likely increase in violence and deaths in the community.

Jennifer Miller, administrator of the San Juan County Alternative Sentencing Division, provided committee members with background on the San Juan 28-Day Jail-Based Treatment Center, which was created as the result of extensive community input (see handout). Incorporating a mix of incarceration, treatment and aftercare, the program has served more than 11,000 convicted offenders since 1994 and was proven twice as successful as other programs in a study by UNM, Ms. Miller said. When indigent funds were redirected last year, it was assumed that the program could now bill Medicaid, but claims were denied because they were considered incarcerated treatment services not eligible for reimbursement. Now the program has had a significant cut — $700,000 — and services have been curtailed.

Following the conclusion of the panel discussion, a committee member asked Dr. Komaromy why physicians are reluctant to do MAT. Providers in small communities do not want to deal with this population, she responded. There is a stigma of caring for the addicted population, but MAT needs to be made the norm for all primary care practices. Another member asked her how many beds are needed in Bernalillo County for detox. A 28-day program is needed for the sickest individuals, Dr. Komaromy said, but this number is small. Care plus detox can work, and for those who have housing, they can detox at home; for those without housing, there needs to be a place for medically managed withdrawal.

Public Comment

Dan Matthews, president of the New Mexico Psychological Association, said his organization has been looking at AOT for a number of years and is not opposed to it. His members are "bulldogs" when it comes to confidentiality, and they are concerned with changes to the Mental Health and Developmental Disabilities Code that will affect everyone.

Sherry Pabich said she was here nine years ago when AOT was introduced. She urged members to pass it in time for the budgeting process. AOT is like a hospital without walls, and hopefully, it will also bring housing along.

Estella Martinez told committee members her daughter died because she had diabetes and was mentally ill and lacked self-awareness. Ms. Martinez said if she had been able to petition for an AOT order, her daughter would not have died at age 23.

Felicia Barnum, a member of the National Alliance on Mental Illness, said that it is time for change. Ms. Barnum has a son who was hospitalized and jailed multiple times. She said she would have preferred AOT to seeing her son arrested and shackled. She is thankful for the mental health court; without it, her son would not be alive today.

Steve Bringe, president of the Depression and Bipolar Support Alliance, said he has no opinion or view on the bill discussed today. He thinks legislators would benefit from hearing testimony from informed groups of peers, who are available, he said.

Jim Jackson, executive director of DRNM, commented that if New Mexico had the same system as in San Antonio, maybe the state could be serving a lot of people and might not need AOT. Mr. Jackson said it is the mission of his organization to protect the rights of those who are competent to make their own decisions who have not been accused of a crime or shown to be a danger to themselves or others. Look carefully at the specifics of the bill, he urged members. If a treatment guardian is already appointed to act for a person, why do we want to second-guess that person? This bill does not restrict a judge to services that are available in the community. Mr. Jackson said he objects to any characterization that his agency just "kills bills". DRNM helped promote the mental health parity bill and has supported CETs, and DRNM has consistently supported expansion of services. Mr. Jackson told committee members not to feel pushed into supporting the AOT bill; there are a lot of options.

Mr. Stettin commented that he was not hearing other ideas about this small group of people who do not believe they are ill. At the end of the day, there is a need, and treatment guardians cannot provide the kind of monitoring that is required.

Donald Hume is a consumer who has been in recovery for 21 years. He will not follow treatment plans given to him by others, but if he decides on it himself, he is far more likely to follow it. The medications he has taken have some serious side effects, Mr. Hume said, sometimes more severe than the symptoms themselves. He was always labeled noncompliant. He was shown by a peer that he could lead a different life and that recovery was possible. His life became so unmanageable that he was finally willing to do something about it. Mr. Hume said that this AOT bill could put him back in the hospital. For the few people it might help, others will be put at risk.

The joint meeting of the LHHS and CCJ recessed at 6:30 p.m.

Thursday, August 7

The committees reconvened for the final day of a joint meeting in the lobby of the UNM School of Law.

Call to Order and Introductions

Representative Chasey called the meeting to order at 9:15 a.m., welcoming members and guests and asking legislators on both committees and LCS staff to introduce themselves.

Health Care for Inmates

Gabriel Eber, staff counsel with the American Civil Liberties Union (ACLU) National Prison Project and adjunct professor at Georgetown University, provided committee members with a presentation on the right to health care in prison (see handout). Mr. Eber specializes in prison health care cases, most of which arise out of constitutional challenges and are usually class actions to ensure that prisoners receive adequate health care. There are three propositions to keep in mind, he said: 1) there are a lot of prisoners; 2) each needs health care; and 3) they cannot

seek care elsewhere and have no control over chronic conditions. Mr. Eber said he cannot emphasize enough the importance of #3. A prisoner is forced to rely on others.

Denial of medical care is cruel and unusual punishment and an unnecessary and wanton infliction of pain, Mr. Eber said. The government has an obligation to provide medical care to those it is punishing. Prison health is public health. Mr. Eber described the graying (age 55 and over) of the prison population and the special needs that arise from functional and cognitive impairment and complex chronic medical conditions. The rate of hepatitis C infection is high in New Mexico prisons, he said, and there are now miracle drugs to treat it but they are extremely costly. Independent monitoring of correctional health care is essential to ensure access and proper health care treatment of inmates and to prevent litigation or federal Department of Justice (DOJ) action. The monitoring must be done on a regular basis, and reports need to be made public. This is especially important with private, for-profit companies that own prisons or provide health care services on contract and are beholden to hedge fund managers rather than the public.

Paul Wright, director of the Human Rights Defense Center in Lake Worth, Florida, is also editor of *Prison Legal News*, the longest running prisoner rights publication in U.S. history. He had co-authored three anthologies, and his articles have appeared in over 80 publications, including *CounterPunch* and *USA Today* (see handouts). He agreed with Mr. Eber's observation about being wary of the business practices of private, for-profit companies. These companies view the prison system, not the prisoner, as the customer. Prisoners cannot go to a different doctor if they are not receiving care, he noted; they cannot call 911 or go the emergency room. There is a lack of transparency with private companies and no oversight of what is actually going on. Audits have shown that many private companies are not providing what they are being paid for, and many refuse to provide information to the public. Many companies give bonuses on how little health care they provide, and scandals often follow them, Mr. Wright said (see copy of *Prison Legal News* and handout on Corizon lawsuits), and they often employ doctors with disciplinary issues who are uninsurable. The biggest need is to monitor them, and this is best done by the government. The state corrections chief is accountable to the public, but accountability is hard to come by with private companies claiming that their information is confidential and proprietary.

Secretary of Corrections Gregg Marcantel said he appreciates points made by the previous presenters. Since inmates are not able to vote, they can be marginalized, and this is not in the interest of public safety, he said. The state's contract with a private company provides for oversight, and if he, as secretary, is not willing to police the contract, then problems certainly can develop. Secretary Marcantel said he does not want to lead corrections as a closed institution, since 96 percent of inmates will return to their communities. Joe W. Booker, Jr., deputy secretary of operations for the Corrections Department (NMCD), who was seated next to the secretary, oversees the state's medical contract.

Upon questioning of Mr. Eber, Mr. Wright and Secretary Marcantel, committee members discussed the following topics.

History of New Mexico's contract with Corizon. Corizon, the state's contractor for medical services in 11 facilities serving approximately 7,000 inmates, is the largest private provider of such services in the country, Secretary Marcantel said. Corizon is paid on a per-member-per-month basis and won a $33 million renewal of its previous 2007 contract in a procurement bid process in 2012. Asked who held the contract before that date, Secretary Marcantel did not know — he is new to this position — but his deputy secretary, Paul Montoya, determined that it was Corizon, under a previous business name, at least since 2000. A member asked who was on the hook, the state or the contractor, for liability for malpractice or not providing care. Secretary Marcantel and Mr. Montoya were unsure and said they would get back to the committees with that information.

Private for-profit company versus nonprofit provider. A member strongly objected to the NMCD contracting with a Wall Street firm instead of a state nonprofit provider. Corizon won the bid, he was reminded. Another member noted that New Mexico has a top-notch medical school and a public health agency that are geared to complementing the public sector and state government, and there are job shortages in New Mexico. All of this should go into the bid equation, the member noted. Another member added that it seems the state is contracting away its public records obligation; something needs to be put in place to ensure transparency and accountability.

Experience with hepatitis C and costs of treatment in New Mexico prisons. Secretary Marcantel said he does not have data on costs with him today, but will provide this to the committees. Approximately 8,200 inmates have been screened for, and 1,908 diagnosed with, hepatitis C, he said. Those affected are treated with the most up-to-date drugs, Secretary Marcantel said, but there are guidelines (he will provide these to the committees, as well). Another member asked about a new drug that actually cures hepatitis C, which costs $84,000 for a course of treatment. The combined purchasing power of the state and federal Medicaid funding should be able to affect this price, which many consider to be outrageous, the member noted, and Congress is planning hearings on this. A member asked about efforts to prevent the spread of hepatitis C and was informed that UNM's Project ECHO is training inmates to function as community health workers within the prisons.

What is being done to provide for the state's aging prison population? These folks are not very healthy when they come in, Secretary Marcantel noted, and studies show they age more quickly in prison than in the general population. He noted current programs for inmates with functional impairments, a hospice program and the use of compassionate release.

Remarks to the Joint Meeting

Maggie Hart Stebbins, Bernalillo County commissioner from District 3, reported that there has been progress with criminal justice reform in reducing the population from 3,000 to

2,100 at the Metropolitan Detention Center (MDC). Since one-fourth of detainees are waiting for a probation violation hearing, the county is paying for a judge to expedite these, with 65 percent of cases resolved at that time. There still are significant problems with alternatives for the mentally ill population at the MDC, Commissioner Stebbins said. She provided members with detailed consensus findings regarding this group and a proposal for funding of regional mental health crisis triage and respite bed facilities throughout the state (see handout). The impact of incarcerating the mentally ill is profound on the system and the individual, Commissioner Stebbins said.

With the behavioral health system in crisis, the MDC has become the largest provider of behavioral health services in New Mexico, Commissioner Stebbins said. Rates paid to behavioral health providers lag behind the cost of services, criteria for access are too narrow, many services no longer exist and MCOs have been incentivized through capitated rates to limit care in order to maximize profits. The results of research and multiple task force findings are identical: what is needed most are regional triage centers and respite care facilities to provide alternatives to far more costly incarceration/hospitalization. Mobile crisis teams are needed to support first responders, who have only two choices for someone in crisis: hospital or jail. Commissioner Stebbins said she believes it is possible to help rebuild New Mexico's intermediate care services system by utilizing federal Medicaid dollars, as is being done in some other states. Bernalillo County has dedicated $1.1 million to a supportive housing initiative and is seeking matching funds from the City of Albuquerque and the state, and the county also will be asking the legislature to fund a statewide CET program. Commissioner Stebbins said the county wants the state to partner in these efforts and to help with Medicaid enrollment of detainees upon release. The estimated budget for the project is $2.9 million, she said, adding that there is political will for this now.

On questioning, Commissioner Stebbins and committee members addressed the following topics.

Medicaid funding to help rebuild community services. Commissioner Stebbins elaborated on the 1915(i) benefit that can help states fund the establishment of acute medical care services and long-term services like respite care, case management and employment services. It is a remarkable opportunity to fully utilize federal dollars, she said. A member agreed and asked Commissioner Stebbins if she could provide legislators with a list of projects that might be funded through this resource, including behavioral health services in the schools. The effort may require discussion with New Mexico's congressional delegation, the member said.

Savings from a new triage crisis center. A member recapped statistics proffered in earlier testimony about cost savings for persons with mental illness who are placed in jail and asked if there are any studies yet about how much will be saved with a triage center. New Mexico has been dealing with public health issues in a criminal setting, the member said. Another member thanked Commissioner Stebbins for bringing economic factors into the discussion, adding that a

hospital is one of the most expensive places for treatment. Perhaps jail money could be redirected to expand these programs, offered another member.

Assistance for inmates to apply for Medicaid before release. It is prohibited by the state to put in the Medicaid application before release, Commissioner Stebbins said, and there is a six- to eight-week waiting period after the application is submitted. The most critical time for behavioral health patients is the first two to three weeks after release, and they are released with just three days of medications. Commissioner Stebbins said that the county was able to train folks recently on presumptive Medicaid certification, but individuals still have to complete the regular enrollment and there is no follow-up to ensure that the enrollment goes through.

Issues with pretrial release. A committee member complained that pretrial release works well for the wealthy, but poor people do not have the ability to bond out. Commissioner Stebbins agreed that this is an important issue. Decisions about bond are made by the courts, she said, and there are objective tools available to measure risk that soon will be implemented in Bernalillo County.

Criminal Justice and Behavioral Health: The Sequential Intercept Model

Dave Webster, M.A., L.I.S.W., is co-clinical director of St. Martin's Hospitality Center in Albuquerque, which has provided programs and services for homeless individuals and families since 1985. People who work in mental health know that no matter where they are located, treatment is always less expensive than incarceration, Mr. Webster noted. He provided committee members with a presentation of a sequential intercept model he has developed that provides a conceptual framework for communities to organize target strategies for justice-involved individuals with behavioral health disorders. The model helps identify gaps in the system and what services are needed. It also can track the results over time (see handout). This model is being utilized by Bernalillo County and Albuquerque during weekly meetings, and results will be presented in September or October, Mr. Webster said. In Albuquerque, there are three ACT teams but no statewide mobile crisis unit for de-escalation of an incident prior to police intervention.

Everyone is identifying the same issues, Mr. Webster said. Diversion instead of jail is sorely needed but does not exist. All of the strategies identified in his model are in use in many places throughout the country, he said, and are known to be effective; they are not pie-in-the-sky ideas. There are many "frequent flyers" in the behavioral health and corrections systems, he said, and the use of AOT would go a long way toward solving some of these problems. The bottom line is that treatment is less expensive than incarceration — end of story, Mr. Webster concluded.

Prison Rape Elimination Act (PREA)

The federal PREA was signed into law in 2003, but it took many years for the government to establish guidelines and auditing criteria to grade a state's compliance. The NMCD had already taken steps to ensure compliance, according to Secretary Marcantel, including creating a required video that describes a prisoner's rights, how to ask for help and

what the reporting process entails (see handout), posting sexual abuse hotline numbers and training staff to recognize and respond to PREA allegations. The department also trained PREA-certified auditors to assist with a circular audit process among 10 western states that ensures an audit of each facility at least once every three years.

Robert Mitchell, deputy director for facilities, Juvenile Justice Services, CYFD, works with the New Mexico Association of Counties (NMAC) to quantify compliance with performance-based standards. Most new employees are trained within a week. The PREA is culture-changing, Mr. Mitchell said, and it also is improving safety. Manuel Romero, a detention specialist with the NMAC, assists counties with implementation and compliance. Mr. Romero also works with the U.S. Civil Rights Division in Washington, D.C., and the DOJ.

May Sagbakken, director of the Rape Crisis Center of Central New Mexico, explained to committee members that the PREA requires collaboration between correctional facilities and local rape crisis centers in order to provide inmates access to "outside confidential support services" (see handout). Audits are now hitting the counties, but there is no additional funding for compliance. Ms. Sagbakken said that her organization has been asked to provide services, and while it has a good relationship with the NMCD, it does not have enough funding to do this. The Rape Crisis Center of Central New Mexico has not been informed of any PREA hotlines and does not have the required confidential setting, she said. There is a high rate of women incarcerated in New Mexico. State funding is needed to create an infrastructure for these specialized services, Ms. Sagbakken said, and she is requesting an appropriation of $750,000 to coordinate these efforts and determine training and best practices for rape crisis centers.

Donna Richmond, executive director of La Pinion Sexual Assault Recovery Services of Southern New Mexico, said she is one of those working the cases. Her organization serves children and adults, but she is concerned how trauma treatment would be delivered to someone inside a prison. That person would need specialized training, and if the center is being asked to serve a larger population, it would need more funding.

Steven Robert Allen, director of public policy for the ACLU of New Mexico, said sexual assault has been a big problem in detention centers and needs to be taken seriously. He also noted that persons just being released may need services. Other states are looking into state-based legislation, and the ACLU feels this is worth considering. Mr. Allen cautioned that audits need to be truly independent and should include the Adult Probation and Parole Division of the NMCD as well as detention centers.

Asked for more details on the $750,000 request, Ms. Sagbakken said it would fund 1.5 to two FTE staff at 10 centers throughout the state. The Rape Crisis Center of Central New Mexico does have its own hotline — a local number that provides immediate assistance — but there is no official collaboration with the NMCD; the center is a check box on the audit list. Secretary Marcantel explained that the way the new federal requirements were rolled out put a lot of people in a bind. Asked what an audit looks like, committee members were told that it includes 52

standards with 200 subcategories. It involves a preview of the facility, then a tour, random interviews, a review of files and a post-audit, with a 30-day window to fix any problems.

Medicaid and Inmates

Matthew Elwell, director of the Luna County Detention Center, spoke of how Medicaid impacts a person upon release from a facility. Medicaid is terminated 60 days after incarceration, he said, and upon release, that person must reapply. A person leaves a facility with a minimal amount of medication, then decompensates and often re-offends. Medicaid needs to be put in place prior to release, Mr. Elwell said. Jails are eager to put inmates safely back into the community and integrated into care. Jails are beginning to get training in applying for presumptive eligibility, he said, but entities doing this must complete the entire Medicaid application. Most prison inmates qualify for Medicaid, but inmates in jail may come from households that do not qualify.

Julie Weinberg, director of the Medical Assistance Division (MAD) of the Human Services Department (HSD), described Medicaid rules as relating to incarcerated individuals (see handout) and told members that the HSD has spent the last 18 months developing a process to allow for coverage of inpatient stays greater than 24 hours for incarcerated individuals. The process required numerous enhancements and changes to the YES-NM portal functionality, as well as to the Medicaid Management Information System (MMIS). The presumptive eligibility category is short term, is based on a shortened application and is good until full Medicaid eligibility is awarded or denied.

Harris Silver, M.D., is a consultant, health care and drug policy analyst and faculty member in the Department of Family and Community Medicine at UNM. With reform mandated by the ACA, approximately 90 percent to 95 percent of inmates are newly eligible for Medicaid, Dr. Silver said (see handout). Lack of access to health care and untreated substance abuse or mental disorders during and after incarceration are risk factors for poor outcomes. Federal Medicaid allows inmates to keep their coverage but will not pay for medical services during incarceration unless the inmate is hospitalized for more than 24 hours. Suspension allows for inmates to retain Medicaid and be discharged with full benefits. Inmates not on Medicaid can be signed up while incarcerated and then put in suspension status until discharge, Dr. Silver said.

Current Medicaid policies in New Mexico call for termination of Medicaid after 30 days in jail or prison despite the HSD's own 60-day policy, do not provide a category for suspension and do not allow applications from inmates before discharge. Prison employees are being trained to sign up inmates after discharge using presumptive eligibility, but those inmates will not be able to qualify for food stamps and temporary assistance at discharge. Dr. Silver described considerable savings that could be derived from treatment of substance abuse and mental health issues, since Medicaid pays 97 percent of the costs versus the state's three percent.

Committee members were provided with a copy of a letter Dr. Silver received from Cindy Mann, director of the Center for Medicaid and CHIP Services, stating in part that incarceration

does not preclude an individual from being determined to be Medicaid-eligible. Inmates are permitted to file an application for Medicaid during the time of their incarceration. The letter goes on the state that the Centers for Medicare and Medicaid Services (CMS) has a long-standing policy that permits states to establish a process under which a Medicaid-eligible inmate is placed in a suspended eligibility status. "In fact, we have informed states that there is no legal basis for terminating the Medicaid eligibility of inmates...solely on the basis of their status as inmates. The suspension provides for a continuity of care...". Dr. Silver concluded that collection of information needed for a presumptive eligibility determination and a completed Medicaid application should occur at jail intake and that there is no good reason why the MAD cannot accept applications from incarcerated individuals and create a suspension category of Medicaid eligibility.

A section of Ms. Weinberg's presentation, titled Barriers to Eligibility, states that applications cannot be submitted until the individual has been released from prison or jail. A committee member confronted Ms. Weinberg with the discrepancy in this statement, and she admitted that it was indeed false. Establishing a suspended category in the state's new MMIS is administratively burdensome, Ms. Weinberg explained. The MAD's information technology contractor has been working on it, but it has been low priority, she said. A member expressed outrage that the state cannot change its computer program in order to save hundreds of thousands of dollars in reimbursements and to improve the lives of many New Mexicans. Asked how soon this could be fixed, Ms. Weinberg stated that a month from now, the MAD should have good presumptive eligibility information, which is a workaround to suspension. Illinois has a grant to offer assistance on the entire inmate eligibility issue, another member informed the committee. Perhaps Illinois should be invited to advise New Mexico, the member suggested. Several members discussed the possibility of asking the LFC to look into the cost to the state and how many dollars have actually been lost from lapses or delays in Medicaid coverage for eligible persons post-release.

Public Comment

Doris Husted, policy director of The ARC of New Mexico, does volunteer work with persons who have been newly released from incarceration. When she asks about Medicaid, some have no idea what she is talking about. She urged that the NMCD and HSD collaborate on a fact sheet or provide other education to persons about to be released. They need to know the next steps, she said.

Denise Lang, Otero County Behavioral Health Council and Local Collaborative, said her husband was a Vietnam veteran, became addicted and got educated, but he committed suicide in 1998. Her son, who had a scholarship at the New Mexico Institute of Mining and Technology, started using drugs after his father's death and ended up in jail. He cleaned up and went to rehab, but he is now serving his second term in prison. The only Otero County facility offering mental health services closed after 40 years. She asked for better oversight by New Mexico agencies, which should start treating addiction like the public health issue it is.

Kathy Sutherland is director of Inside Out, which provides peer support in Española and Taos for substance abuse. She urged legislators to pass a law so that nurse practitioners can prescribe suboxone for treating the enormous problem of opiate addiction. Instead of incarceration, use a jail diversion program instead, she said. If a probation officer suggests that someone go to prison because they cannot stay clean, then you will have more grandparents raising kids. Addicts will relapse; it is part of addiction.

Dr. Silver said there are only 10 pharmacies that are currently prescribing Narcan. Española and state police will carry Narcan in squad cars. The federal Food and Drug Administration requires a prescription.

Alan Carreago spoke as a private citizen. He has been clean since 1985 and worked for many years in addiction treatment programs. He now works with Molina Healthcare, Inc. When he was strung out on heroin in 1985 and tried to gain admission to UNM Hospital, he could not because he was not suicidal. It is a public health issue and a public safety issue that New Mexico does not have the capacity it needs, he said. Turquoise Lodge wait time can be several weeks to several months.

Adjournment

There being no further business, the third meeting of the CCJ for the 2014 interim was adjourned at 5:40 p.m.